DIVISION I

CACR07-825

MARCH 12, 2008

TAUJI RAWLS	APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. CR2005-4977]
V.		HON. BARRY SIMS, JUDGE
STATE OF ARKANSAS	APPELLEE	AFFIRMED

Tauji Leawon Rawls was convicted in a bench trial of simultaneous possession of a firearm and drugs; possession of a controlled substance with intent to deliver; possession of drug paraphernalia; and possession of a firearm by a certain person. He was given concurrent 168-month prison sentences for each offense. For reversal, Rawls argues that the trial court erred by refusing to grant his motion to suppress and by denying his motion for directed verdict on each of the charges. We find no error and, accordingly, we affirm.

Sufficiency of the Evidence

A motion for directed verdict, or a motion to dismiss in a bench trial, is a challenge to the sufficiency of the evidence. *Reed v. State*, 91 Ark. App. 267, 270, 209 S.W.3d 449, 451 (2005). While the sufficiency-of-the-evidence argument was not Rawls's first point on

appeal, due to double-jeopardy concerns, we review this issue first. *See Isom v. State*, 356 Ark. 156, 148 S.W.3d 257 (2004). Rawls contends that the evidence was insufficient to sustain any of his convictions. In reviewing a challenge to the sufficiency of the evidence, we determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Malone v. State*, 364 Ark. 256, 217 S.W.3d 810 (2005). Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Tillman v. State*, 364 Ark. 143, 217 S.W.3d 773 (2005).

Officer Mark Williams of the Little Rock Police Department stopped a car for speeding in which Rawls was a passenger. The traffic stop occurred at an Exxon station. Officer Williams testified that, upon approaching the car to speak to the driver, he smelled marijuana. He asked the driver for identification and discovered that the driver's license was suspended and that there were several warrants for his arrest. While Officer Williams was taking the driver out of the car and putting him in the police car, Officer Brian Healy arrived as backup.

Officer Healy approached Rawls and asked for identification. Rawls did not have identification but told Officer Healy that his name was Steve Ross and that his date of birth was "9/7 of '77." After Officer Healy processed this information and did not find anyone matching this description, Rawls changed his date of birth to "7/9 of '77." Officer Healy again processed the information but found no one matching this identity. Officer Healy then asked Rawls to step out and place his hands on top of the car. Officer Healy testified that,

when he started to do a pat down, Rawls attempted to turn and face him. Officer Healy forced Rawls back around and felt what he thought was the handle of a pistol. He then notified Officer Williams that Rawls had a weapon on him, and Rawls attempted to run. The two officers wrestled with Rawls, who knocked the officers to the ground and started running. During the struggle, Rawls dropped the gun. The officers chased him. During the chase, Officer Healy testified that he saw Rawls throw a Wal-Mart-type bag, which landed against a chain-link fence. Officer Healy said that, after he caught up to Rawls, he had to pepper spray him twice to get him to calm down and submit to custody.

Officer Healy testified that, after Rawls was taken into custody, he went back to get the bag. He said that the bag was not difficult to locate because it was the only bag along the fence line where he saw Rawls throw a bag. Officer Healy saw "a quarter brick of what appeared to be cocaine" and "smaller off-white rocks" that he suspected were crack cocaine. After Rawls was placed in the police car, the officers searched the car and discovered two electric scales behind the driver's seat; a large clear bag filled with smaller baggies containing "green vegetable matter," which turned out to be marijuana, in the driver's floorboard; and a glass beaker and a box of clear baggies inside the beaker on the floorboard of the front passenger seat. A bystander retrieved the gun at the scene and gave it to an investigating officer, who turned it over to Officer Healy.

Turning to Rawls's convictions for simultaneous possession of a firearm and drugs and possession of a firearm by a certain person, Rawls contends that there was not proof that the gun introduced at trial was his gun. He claims that the description of the gun by Officer

Healy did not fit the description of the gun admitted into evidence, that Officer Healy did not himself retrieve the gun, and that the person who did retrieve the gun did not testify.[1]

The State responds, pointing to the following testimony at trial. Officer Healy testified that, during his pat-down search of Rawls, he felt what he was sure was the handle of a gun. Officer Healy testified that he saw the gun on the ground and tried to kick it under the car to move it out of Rawls's reach. A bystander retrieved the gun and gave it to an investigating officer, who gave it to Officer Healy at the scene. Officer Healy testified that he then gave the gun and the other evidence collected to Detective Troy Ellison. Officer Healy testified that the gun at trial looked like the gun he saw at the scene. This account of the events was corroborated by Officer Williams, who also testified that he saw the gun when it was dropped, and identified it at trial as a silver gun. Further, Detective Ellison testified that the gun had not been out of his possession since Officer Healy turned it over to him.

We do not attempt to weigh evidence or assess the credibility of the witnesses, as that determination lies within the province of the trier of fact. *See, e.g.*, *Williams v. State*, 338 Ark. 178, 992 S.W.2d 89 (1999). The factfinder may resolve questions of conflicting testimony and inconsistent evidence and may choose to believe the State's account of the facts rather than

[1]We note that Rawls has not argued that the court abused its discretion in admitting evidence, specifically the gun. He argues only that the evidence was insufficient to support the verdict. In determining the sufficiency of the evidence on appeal, we consider all of the evidence, including that which may have been erroneously admitted. *Willingham v. State*, 60 Ark. App. 132, 959 S.W.2d 74 (1998).

the defendant's. *Ross v. State*, 346 Ark. 225, 57 S.W.3d 152 (2001). Based on the foregoing, we believe there is substantial evidence that Rawls was in possession of a firearm.

Rawls also argues that there was insufficient evidence that he was in possession of the cocaine. He claims that there is no evidence that the bag Officer Healy retrieved was the item Rawls allegedly tossed during the chase. We disagree. Officer Healy testified that he saw Rawls throw a bag near the chain-link fence during the chase; that no one else was around during the chase; that there was only one bag near the fence when he went to retrieve it; that the bag contained what appeared to be cocaine, crack, and marijuana; and that he turned this evidence over to Detective Ellison. Detective Ellison testified that the contents of the bag tested positive for cocaine. The court was entitled to believe this testimony. We hold there was substantial evidence that Rawls was in possession of cocaine.

Finally, Rawls contends that the State did not show that he was in possession of drug paraphernalia, specifically the scales. While Rawls admits that the State need only prove constructive possession, he argues that the scales were behind the driver's seat and that constructive possession occurs when the contraband is found in a place "immediately and exclusively accessible to the defendant and subject to his control."

To prove constructive possession, the State must establish that the defendant exercised "care, control, and management over the contraband." *McKenzie v. State*, 362 Ark. 257, 263, 208 S.W.3d 173, 175 (2005). While we have held that constructive possession may be implied when the contraband is in the joint control of the accused and another, joint occupancy of a car, standing alone, is not sufficient to establish possession. *Jones v. State*, 355 Ark. 630, 634,

144 S.W.3d 254, 256 (2004). There must be some other factor linking the accused to the contraband. *Id.* In other words, there must be some evidence that the accused had knowledge of the presence of the contraband in the vehicle. *Id.* Other factors to be considered in cases involving vehicles occupied by more than one person are (1) whether the contraband is in plain view; (2) whether the contraband is found with the accused's personal effects; (3) whether it is found on the same side of the car seat as the accused was sitting or in near proximity to it; (4) whether the accused is the owner of the automobile, or exercises dominion and control over it; and (5) whether the accused acted suspiciously before or during the arrest. *McKenzie*, *supra* (citing *Mings v. State*, 318 Ark. 201, 884 S.W.2d 596 (1994)).

In this case, the beaker filled with clear plastic baggies was found on the floorboard directly under where Rawls was sitting. Moreover, Rawls fought with the officers and ran away when they attempted to pat him down, which the trial court certainly could have concluded was suspicious. A further search of the car revealed a total of 6.1 grams of marijuana that was divided into small baggies. Detective Ellison testified that the beaker and baggies are routinely used to individually package drugs for distribution. We hold that this evidence constitutes substantial evidence that Rawls constructively possessed drug paraphernalia.

Suppression of Evidence

We now address Rawls's argument that the trial court erred by refusing to grant his motion to suppress. In reviewing the denial of a motion to suppress evidence, we conduct a de novo review based on the totality of the circumstances, reviewing findings of historical

fact for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to the inferences drawn by the circuit court. *Davis v. State*, 351 Ark. 406, 94 S.W.3d 892 (2003).

Rawls does not dispute that the car in which he was a passenger was legally stopped for speeding. However, Rawls argues that the officer had no right to detain him as there was no reasonable suspicion that he had committed, was committing, or was about to commit a felony. *See* Ark. R. Crim. P. 3.1. He claims that his giving the officer a name that did not appear in the computer system was not a sufficient basis upon which to detain him.

We reject Rawls's argument. Officer Williams testified that, upon approaching the car, he smelled marijuana. He told this to Officer Healy when Officer Healy arrived on the scene. When Officer Healy began asking identification questions of Rawls, Officer Healy was unable to confirm Rawls's identity. Officer Healy then asked Rawls to step out of the car so that he could perform a pat-down search. Officer Healy testified that, until he discovered who Rawls was, he determined that he needed to conduct a pat-down search for safety.

The supreme court has held that the smell of marijuana coming from a car is sufficient to arouse suspicion and provide probable cause for the search of the car. *McDaniel v. State*, 337 Ark. 431, 437, 990 S.W.2d 515, 518 (1999). In *Brunson v. State*, 327 Ark. 567, 940 S.W.2d 440 (1997), the supreme court held that the smell of marijuana or its smoke emanating from a vehicle gives rise to reasonable suspicion to detain the occupants in order to determine the lawfulness of their conduct and to arrest the occupants, depending upon the circumstances. In this case, Officer Healy had reasonable suspicion to believe that an offense had occurred,

justifying the detention of Rawls and a pat-down search incident to an arrest. 327 Ark. at 571–72, 940 S.W.2d at 442. *See also* 327 Ark. at 573, 940 S.W.2d at 442 (stating that, because the danger to an officer during a traffic stop is likely to be greater when there are passengers in addition to the driver of the stopped car, an officer making a traffic stop may order passengers to get out of the car pending the completion of the stop)(citing *Maryland v. Wilson*, 519 U.S. 408 (1997)). Accordingly, we find no error in the trial court's denial of Rawls's motion to suppress.

Affirmed.

PITTMAN, C.J., and GRIFFEN, J., agree.